

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

COREY M. BROWN (DECEASED)

Claimant

V.

J&J DEVELOPMENTS, INC.

Respondent

AND

CINCINNATI INDEMNITY CO.

Insurance Carrier

Docket No. 1,060,165

ORDER

STATEMENT OF THE CASE

The insurance carrier requested review of the December 10, 2014, Award entered by Administrative Law Judge (ALJ) Brad E. Avery. The Board heard oral argument on April 7, 2015. Bryan W. Smith of Topeka, Kansas, appeared for claimant. Christopher J. McCurdy of Overland Park, Kansas, appeared for the insurance carrier.

The ALJ found claimant's January 5, 2012, death arose out of and in the course of his employment with respondent.¹ The ALJ ordered claimant's funeral expenses paid up to the statutory limit and awarded death benefits to the conservators on behalf of claimant's three dependents.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The insurance carrier argues the weight of credible evidence indicates claimant's death arose out of a personal business dispute involving a separate business entity

¹ Claimant's Death Certificate lists the date of death as January 5, 2012, based upon the date the body was recovered. The parties agreed the evidence shows claimant's death actually occurred on January 3, 2012. (See R.H. Trans. at 5-6.)

controlled by claimant and did not arise out of his employment with respondent. The insurance carrier maintains the Award should be reversed.

Claimant contends the Award should be affirmed in all respects, arguing the credible evidence proves the meeting leading to his death was conducted in his capacity as an agent of and property manager for respondent, and thus claimant's death arose out of and in the course of his employment.

The sole issue for the Board's review is: did claimant's death arise out of and in the course of his employment with respondent?

FINDINGS OF FACT

Respondent is a real estate development company which owned multiple commercial properties for lease. John Brown, respondent's CEO and claimant's father, testified most of respondent's properties were strip malls, each holding five or six separate businesses. Claimant was employed by respondent as property manager. Mr. Brown explained claimant's job duties:

If there was a problem from a mechanical standpoint or [respondent's tenants] just had a complaint – and I mean, retail tenants have a lot of complaints. If they had problems, they would want a sounding board, and [claimant] was that guy. He [saw] to it that the lawns were mowed and manicured. If there was any repair work that needed to be done on the facilities or in the parking lots or anything like that, because it's a never ending battle to keep on top of that stuff. And that's what he would do.²

Mr. Brown stated claimant was a salaried employee who carried a cellular phone and drove a company truck for use during a typical work day. Claimant often traveled to various locations in the course of his employment.

Respondent owned and helped develop a property located at the intersection of 15th St. and Adams St. in Topeka, Kansas, known as Hudson Crossing. Hudson Crossing contained a liquor store, a laundromat, a café, and a convenience store. While respondent leased the spaces to various businesses, it retained ownership of the convenience store's fuel pumps, canopies, coolers, and various kitchen equipment.

Sav-N-Shop, LLC (Sav-N-Shop), a company originally owned by Mr. Brown, filed its Articles of Organization with the Kansas Secretary of State on December 4, 2009. Monroe Lockhart Aldridge III, a.k.a. Monroe Lockhart, purchased 30 percent of Sav-N-Shop's

² R.H. Trans. at 156.

shares from Mr. Brown for \$70,000.³ The remaining 70 percent of the shares was gifted by Mr. Brown to Amy Hunter, claimant's fiancée. Sav-N-Shop's Limited Liability Company Amended Operating Agreement was entered into and signed by Ms. Hunter and Mr. Lockhart on September 15, 2011. Claimant and Ms. Hunter signed a Voting Trust Agreement on September 15, 2011, whereby Ms. Hunter gave all voting rights to claimant for her shares. Claimant was unable to own shares due to a prior criminal conviction. Claimant received no compensation for serving as a voting member and had no responsibility as a member by becoming voting trustee.

Sav-N-Shop and respondent entered into a lease agreement for the convenience store space in Hudson Crossing. The lease is dated November 1, 2010, but Mr. Brown testified he believed the lease was actually signed by the parties on September 15, 2011, along with the operating agreement and voting trust agreement. Mr. Brown stated the lease was probably a form taken from a computer, and the date had not been changed.

Mr. Brown signed the lease in his capacity as president of respondent, lessor. Mr. Lockhart signed the lease in his capacity as part owner of Sav-N-Shop, LLC d/b/a Mo's Express, lessee.⁴ Claimant also signed the lease under the Sav-N-Shop heading, but with no indication as to his title. Mr. Brown testified he asked claimant to sign the lease because the voting trust stock was going to be assigned, and he wanted claimant's name on the lease agreement.

Respondent, in an agreement typical of its arrangements with other convenience store tenants, guaranteed the payments to Carter Oil for gas purchased by Sav-N-Shop. Mr. Brown testified this arrangement began when he originally owned Sav-N-Shop, and he and Mr. Lockhart agreed the arrangement should remain in place after Mr. Lockhart obtained ownership. Mr. Brown noted they did not create a new, separate written agreement on this matter. Sav-N-Shop purchased 150,000 gallons of gas per month from Carter Oil, which cost approximately \$450,000. The payments to Carter Oil were due every 7 days and amounted to approximately \$65,000 - \$68,000 per week. These payments were electronically debited from Sav-N-Shop's bank account, and if the balance was insufficient, respondent was liable. Mr. Brown testified respondent had an interest in making sure Sav-N-Shop made its deposits to the bank. Respondent also had an interest in Sav-N-Shop's \$12,000 monthly rent payment.

Mr. Lockhart and claimant were lifelong friends, having known each other since a young age. Mr. Brown stated he had known Mr. Lockhart for many years, and Mr. Lockhart's friendship with claimant was a main reason he gave Mr. Lockhart the

³ Mr. Brown testified the \$70,000 payment did not go to respondent but was instead invested into Sav-N-Shop. (See R.H. Trans. at 141.)

⁴ Mo's Express was the operating name of the convenience store run by Mr. Lockhart. Mr. Lockhart was the "Mo" in Mo's Express.

opportunity to own and operate Mo's Express. Mr. Lockhart was the general manager for Mo's Express and hired his cousin, Anthony Talbert, as store manager. Mr. Brown stated Mr. Talbert had experience in management and a college business degree.

Respondent loaned \$62,092 to Sav-N-Shop for inventory and equipment. Mr. Brown testified the note was made payable to both himself and respondent, though he was aware the tax return lists only his name. Mr. Brown did not have a copy of the note, and the only documentation available lists Mr. Brown personally as the guarantor. Nikki Schmitt, respondent's former bookkeeper/office manager, testified she was aware of the note and recalled the amount was owed to both respondent and Mr. Brown. Tom Kelly, a former consultant for respondent, also testified he recalled the note as payable to both respondent and Mr. Brown.

Under Mr. Lockhart's management, Mo's Express was losing money. Mr. Brown had several discussions with both claimant and Mr. Kelly regarding his concern about the store's losses. Mr. Brown eventually decided Mo's Express needed to be sold and Mr. Lockhart removed from management. Respondent had no formal ownership interest in Sav-N-Shop, and the lease agreement did not contain any provision to allow respondent to dictate a change in Sav-N-Shop's management. Mr. Brown explained why he felt he or respondent had the authority to sell the business when it was technically owned by Ms. Hunter and Mr. Lockhart. Mr. Brown testified:

Because we had such a – a liability from [respondent] in regards to that business. We were looking at approximately \$600,000 in debt that [respondent] had guaranteed on the business. And if I were able to sell the business, I would therefore have the ability to pay for all that equipment and everything that we owed money for.⁵

Mr. Brown agreed that respondent, by virtue of its interest in the finances of Mo's Express, had significant influence over whether Mr. Lockhart could continue to own and operate the business.

On January 3, 2012, a meeting was scheduled for 9:00 a.m. at respondent's offices to discuss the issue of selling Sav-N-Shop. Originally Mr. Brown, Mr. Lockhart, and claimant were to attend this meeting. However, Mr. Lockhart arrived early that morning and met only with Mr. Brown at approximately 8:30 a.m. for about 15 minutes. Mr. Brown indicated Mr. Lockhart did not show any concern regarding the sale of the business. He did not sense Mr. Lockhart would retaliate against claimant in any way based on that morning's meeting. Mr. Brown stated Mr. Lockhart just got out of his chair and walked out. Mr. Brown testified he planned for Mr. Lockhart to receive both his investment and an estimated 15 percent return following the sale of the business. He said, "[Mr. Lockhart]

⁵ R.H. Trans. at 138-139.

was not going to be just kicked out the door. . . . We weren't about to just say goodbye to him."⁶

Mr. Brown spoke with claimant on the telephone afterward and provided a summary of the meeting. Mr. Brown stated he asked claimant to speak with Mr. Lockhart to ameliorate the situation and try to work out the sale for the store. Mr. Brown testified he believed claimant was "going to take care of" respondent's business when he asked claimant to speak to Mr. Lockhart at his behest.⁷ Mr. Brown indicated he considered claimant to be not only an employee of respondent, but a representative of respondent while speaking with Mr. Lockhart about the sale of the store. Mr. Brown stated claimant agreed to speak with Mr. Lockhart. He testified:

A. [Claimant] said, "I'll do what I can do, Dad."

Q. Okay. All right. And those are the last words you heard from him?

A. That's the last words I heard him ever say.⁸

Claimant arrived at Hudson Crossing around mid-morning on January 3, 2012. Claimant left his vehicle on the premises and rode with Mr. Lockhart to the Alliance Bank located on 6th Avenue in Topeka. Both claimant and Mr. Lockhart entered the bank lobby when Mr. Lockhart made a deposit into Sav-N-Shop's account. Claimant and Mr. Lockhart decided to go to lunch at the Blind Tiger Brewery & Restaurant, located at the intersection of 37th Street and Kansas Avenue.

While en route to the Blind Tiger, claimant and Mr. Lockhart began to drive around and discuss Mr. Lockhart's meeting with Mr. Brown and the sale of the store. Douglas County Detective Jay Armbrister, the detective who received Mr. Lockhart's eventual confession, stated Mr. Lockhart was very upset by the events of the meeting. Det. Armbrister testified:

And when [Mr. Lockhart] would try to talk to [claimant] about it, [claimant] would just say, "You need to talk to Dad. You need to talk to Dad." And this upset [Mr. Lockhart]. And the reason it upset [Mr. Lockhart] was based on his lifelong friendship with [claimant]. He felt like [claimant] was not standing up for him in the business. He felt disrespected.⁹

⁶ *Id.* at 140.

⁷ *Id.* at 191.

⁸ *Id.* at 202.

⁹ *Id.* at 22.

The discussion between claimant and Mr. Lockhart escalated into an argument. Mr. Lockhart told Det. Armbrister he was upset because he felt he should be bought out of the business instead of terminated, and he believed claimant was upset because claimant felt misled about the condition of the business. Mr. Lockhart, who was driving, eventually parked his vehicle in a parking lot north of White Lakes Shopping Center and shot claimant twice in the head.

Mr. Lockhart then drove to Douglas County and disposed of claimant's body in a remote, wooded area. Mr. Lockhart later moved claimant's vehicle to a different location, disposed of the murder weapons, and set fire to his personal vehicle in an attempt to destroy evidence of the crime. Claimant's body was discovered in Douglas County on January 5, 2012. Mr. Lockhart confessed to the murder to Det. Armbrister on September 26, 2013.

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-508(f)(2)(B) states:

An injury by accident shall be deemed to arise out of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

ANALYSIS

In *Brannum v. Spring Lakes Country Club, Inc.*,¹⁰ the Kansas Supreme Court found a case arose out of and in the course of employment where the claimant was shot and killed because he did not have a subordinate's paycheck ready. The Court held:

Where a supervisor is, without cause, assaulted by a subordinate employee who is disgruntled over conditions of work imposed upon him by the supervisor in the discharge of his duties, the injury to the supervisor arises out of his employment within the meaning of the workmen's compensation act, and we so hold.¹¹

¹⁰ *Brannum v. Spring Lakes Country Club, Inc.*, 203 Kan. 658, 455 P.2d 546 (1969) *on reh'g*, 207 Kan. 321, 485 P.2d 226 (1971).

¹¹ *Id.* at 668.

In *Springston v. IML Freight, Inc.*,¹² the Kansas Court of Appeals wrote “an injury by assault arises ‘out of’ employment when it arises out of the nature, conditions, obligations and incidents of the employment in the same manner as any other injury.”¹³ In *Jordan v. Pyle, Inc.*,¹⁴ the Court of Appeals found an injury resulting from an assault was compensable even though the claimant may have been the aggressor, stating: “[e]ven those injuries which result from a personal dispute between coworkers are compensable if the employer has reason to anticipate that the injuries would occur if the employees continued to work together.”¹⁵

More recently in *Bernal v. Rubio*,¹⁶ the Court of Appeals confirmed that an employee assaulted on the job by a coworker has a valid workers compensation claim, unless the attack grew out of a purely personal dispute. The Court in *Bernal* wrote: “[e]ven if a fight has its genesis in a personal dispute, an injured employee may recover if the employer were aware of the friction between the two workers and might anticipate an altercation.”¹⁷

Claimant was an employee of J&J Development, which was owned by his father, John Brown. The morning of claimant’s death, Mr. Brown talked to Monroe Lockhart about selling the business. Detective Armbrister testified Mr. Lockhart confessed he was very upset and felt disrespected after meeting with Mr. Brown. Claimant was told by his employer to talk to Mr. Lockhart about the sale of the Save-N-Shop business, which was managed and partially owned by Mr. Lockhart. Claimant’s discussion with Mr. Lockhart about selling the business turned into an argument. According to Det. Armbrister, Mr. Lockhart confessed the argument got heated, and he pulled out a gun and shot claimant twice in the head.

The conditions of claimant’s employment placed him in harm’s way when he was told by his employer to talk to Mr. Lockhart about selling the business. The work-related meeting and topic of discussion directly resulted in claimant’s murder. Claimant’s death arose out of the nature, conditions, obligations and incidents of his employment with respondent.

¹² *Springston v. IML Freight, Inc.*, 10 Kan.App.2d 501, 704 P.2d 394, rev. denied 238 Kan. 878 (1985).

¹³ *Id.* at 502-503.

¹⁴ *Jordan v. Pyle, Inc.*, 33 Kan.App.2d 258, 101 P.3d 239 (2004), rev. denied 279 Kan. 1006 (2005).

¹⁵ *Id.* at 266; see also *Harris v. Bethany Medical Center*, 21 Kan.App.2d 804, Syl. ¶ 2, 909 P.2d 657 (1995).

¹⁶ *Bernal v. Rubio*, No. 106,921 (Kansas Court of Appeals unpublished opinion filed Oct. 5, 2012).

¹⁷ *Id.* at 3.

CONCLUSION

Claimant suffered an injury by accident arising out of and in the course of his employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated December 10, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Brad E. Avery, Administrative Law Judge